IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

CRP.No. 75 of 2006()

AGAINST THE ORDER DATED 09/09/2005 IN EP 50 2004 IN OS.410/2002 of PRL.SUB COURT,IRINJALAKUDA

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REVN. PETITIONERS: JUDGMENT DEBTORS:

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1. **BETHAZATHA MEDICALS,**
   MAROTTICHAL POST, THRISSUR.

2. **A.D. SHAJAN, S/O. DEVASSY,**
   PROPRIETOR, BETHZATHA MEDICALS,
   ALANGATTUKARAN HOUSE, BHARATHA ROAD,
   MUTTITHADI P.O., THRISSUR.

3. **A.O. DEVASSY, S/O. OUSEPH,**
   ALANGATTUKARAN HOUSE, BHARATHA ROAD,
   MUTTITHADI P.O., THRISSUR.

BY ADV. SRI.T.N.MANOJ

RESPONDENT: DECREE HOLDER.

BANK OF INDIA, MAROTTICHAL BRANCH,
REPRESETNED BY THE CHIEF OFFICER.

BY ADV. SRI.DEVAN RAMACHANDRAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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C.R.P.NO.75 OF 2006

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Dated this the 9th day of March 2007

ORDER

The petitioners are the judgment debtors in O.S.410/2002 on the file of the Sub Court, Irinjalakuda. In execution of the money decree, personal execution was allowed as against petitioners 2 and 3 overruling the objections raised by them raising plea of no means. It is worthy to note that the decree holder has given evidence as PW1 and it is on the basis of evidence tendered by PW1 that the court below found that petitioners 2 and 3 are having means to pay off the debt in substantial portions thereof. It is for reason of the petitioner not clearing the debt in E.P. filed as early as in 2004 that personal execution against petitioners 2 and 3 were ordered on 9.9.2005. On going through the impugned order, I am of the view that petitioners are not persons who are able to discharge the entire debt in lump. All the same, they are persons who are competent to discharge the debt in substantial portion thereof.

2. In the circumstances, personal execution ordered against the petitioners 2 and 3 cannot be faulted. Counsel for

the respondent/decree holder graciously submitted that he is prepared to proceed against the properties that are made a charge as per the compromise decree but provided the judgment debtors will not be attempting to indefinitely prolong the matter by raising untenable contentions.

3. In the result, I order that the respondent/decree holder shall proceed against the properties which are made a charge under the decree and that if for reason of the petitioners raising untenable objections and protracting the execution proceedings disabling the decree holder to have the sale of the property or any portion thereof as is ordered by the execution court to be brought to sale to have the decree satisfied, the decree holder shall be entitled to proceed simultaneously for personal execution also against petitioners 2 and 3.

With this direction this C.R.P. is disposed of.

K.P.BALACHANDRAN, JUDGE

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